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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CITIZENS FOR CLEAN AIR <i>et al.</i> ,)	Case No. 2:18-cv-01803
)	
Plaintiffs,)	
)	CONSENT DECREE: PLAINTIFFS
v.)	AND STATE OF ALASKA
)	
ANDREW WHEELER <i>et al.</i> ,)	
)	
Defendants,)	
)	
STATE OF ALASKA)	
)	
Defendant-Intervenor.)	

CONSENT DECREE
(Case No. 2:18-cv-01803)

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1 WHEREAS, on December 18, 2018, Citizens for Clean Air and Sierra Club (“Plaintiffs”)
2 filed the above-captioned matter against Andrew Wheeler, in his official capacity as
3 Administrator of the United States Environmental Protection Agency, and Chris Hladick, in his
4 official capacity as Regional Administrator of the United States Environmental Protection
5 Agency, Region 10 (collectively, “EPA”);

6 WHEREAS, the State of Alaska moved to intervene as a defendant in this matter, and the
7 Court granted intervention on July 16, 2019;

8 WHEREAS, Plaintiffs and EPA have agreed to a settlement of this action and have
9 entered into a separate consent decree (“EPA consent decree”);

10 WHEREAS, the EPA consent decree obligates EPA to sign a notice of final rulemaking
11 determining whether the State of Alaska has made an administratively complete state
12 implementation plan (“SIP”) submission intended to meet serious area nonattainment plan
13 requirements for purposes of the 2006 24-hour PM2.5 National Ambient Air Quality Standards
14 in the Fairbanks North Star Borough;

15 WHEREAS, Plaintiffs and EPA initially proposed that the EPA consent decree would
16 obligate EPA to sign the final notice of rulemaking no later than July 8, 2019;

17 WHEREAS, the State of Alaska disputes the claims asserted by Plaintiffs;

18 WHEREAS, following the Court’s order granting the State of Alaska’s intervention
19 motion, Plaintiffs agreed to amend the EPA consent decree to extend the date by which it would
20 obligate EPA to sign the final notice of rulemaking to no later than January 15, 2020, provided
21 that Plaintiffs and the State of Alaska enter into this consent decree (“State consent decree”)
22 concurrently;

23 WHEREAS, the Plaintiffs and the State of Alaska agree to enter into the State consent
24

1 decree without any admission of any issue of fact or law;

2 NOW THEREFORE, upon the consent of the Plaintiffs and the State of Alaska, it is
3 hereby ordered, adjudged, and decreed that:

4 1. No later than December 15, 2019, the State of Alaska, Department of Environmental
5 Conservation (ADEC) shall submit a serious area SIP to EPA; however, any disputes regarding
6 the content of the serious area SIP, including whether the submitted SIP is administratively
7 complete or approvable, are beyond the scope of this consent decree.

8 2. Upon submission of the serious area SIP to EPA, ADEC will provide notice to the
9 Court and this consent decree shall terminate in seven days.

10 3. The deadline established by this consent decree may only be extended: (a) by written
11 stipulation of Plaintiffs and the State of Alaska with notice to the Court; or (b) by the Court upon
12 motion of the State of Alaska for compelling need shown and upon consideration of any
13 response by Plaintiffs and any reply by the State of Alaska. Under this section, “compelling
14 need” may include additional time required to re-notice regulations for public comment to ensure
15 the final rules are promulgated in accordance with the Alaska Administrative Procedures Act, AS
16 44.62.010. et seq. Any change to the deadline established by this State consent decree shall not
17 by itself either affect the deadline established in the EPA consent decree or constitute good cause
18 for purposes of paragraph 4 of the EPA consent decree.

19 4. In the event of a dispute between Plaintiffs and the State of Alaska concerning the
20 interpretation or implementation of any aspect of this consent decree, the disputing party shall
21 provide the other party with a written notice outlining the nature of the dispute and requesting
22 informal negotiations. These parties shall meet and confer in order to attempt to resolve the
23 dispute. If these parties are unable to resolve the dispute within twenty (20) business days after
24

1 receipt of the notice, either party may petition the Court to resolve the dispute.

2 5. No motion seeking to enforce this consent decree or for contempt of Court shall be
3 properly filed unless the procedure set forth in Paragraph 3 has been followed, and the non-
4 moving party has been provided with written notice at least twenty (20) business days before the
5 filing of such motion.

6 6. Plaintiffs shall not seek from the State any costs of litigation (including attorneys'
7 fees) for activities related to the State's intervention and this State consent decree performed
8 prior to the entry of this consent decree.

9 7. This Court shall retain jurisdiction over this matter to enforce the terms of this consent
10 decree.

11 8. Any notices required or provided for by this consent decree shall be in writing, via
12 electronic mail, and sent to the following (or to any new address of counsel as filed and listed in
13 the docket of the above-captioned matter, at a future date):

14 For Plaintiffs Citizens for Clean Air and Sierra Club:

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9. This agreement is voidable at the sole discretion of any party and the terms of the proposed consent decree may not be used as evidence in any litigation between the parties if, for any reason:

a. The Court should decline to approve this consent decree in the form presented, or

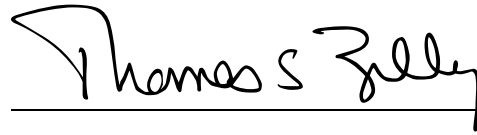
b. The above-referenced EPA consent decree is not finalized and approved by the Court.

10. Nothing in the terms of this consent decree shall be construed to confer upon this Court jurisdiction to review any issues subject to EPA review under the Clean Air Act beyond what the Court would have absent this agreement.

11. The undersigned representatives of Plaintiffs Citizens for Clean Air and Sierra Club and Defendant State of Alaska certify that they are fully authorized by the party or the parties they represent to consent to the Court's entry of the terms and conditions of this decree.

1 IT IS SO ORDERED.

2 DATED this 23rd day of October, 2019.

3 

4 Thomas S. Zilly
5 United States District Judge

6 Respectfully submitted this 11th day of October, 2019.

7 s/ Jeremy C. Lieb

8 Jeremy C. Lieb (WSB #47219)
9 Erik Grafe (AK Bar #0804010) (*pro hac vice* pending)
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18 s/ Emma Pokon

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